



September 22, 1977

Honorable Bert Lance  
Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lance:

This is in reply to your request for the Commission's views on the Department of Defense draft bill, "To permit Civil Service employees in the grades of GS-15, GS-16, GS-17, GS-18, or level V of the Executive Service whose rate of basic pay was limited by Section 5303 of title 5, United States Code, to the rate of level V of the Executive Schedule during the two-year period prior to September 1, 1976, to compute their retirement annuity on the basis of the highest rate earned in 1977, rather than on the basis of averaging the rate of basic pay earned over any 3 consecutive years of creditable service."

The effect of the proposal would be to supersede 5 U.S.C. 8331(4) to allow affected eligible employees retiring optionally before January 1, 1979 or involuntarily before March 1, 1980, to have their retirement annuities computed on the basis of the single highest rate of basic pay achieved during calendar year 1977, rather than on the basis of the normal high three year average rate. Optional retirement under such provision would have to be requested by an employee between November 1, 1977 and January 31, 1978.

The draft bill is in response to the March 1977 increase in Congressional, Judicial, and Executive salaries, rates of compensation which had been effectively frozen for the previous eight years. Due to the imposed ceiling, the March 1977 pay adjustment clearly does represent a formidable disincentive for affected employees to retire at the

(EXECUTIVE REGISTRY FILE *Civil Service Commission*)

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present time. We concur with the reasoning behind the draft bill; that those eligible employees who would legitimately prefer to retire, might be inclined to remain on the job simply for the purpose of maximizing their high three year average salary for annuity purposes. In addition, we are aware of the impending reduction-in-force which the Department of Defense will be facing early in 1978. The combination of these factors will tend to impact severely, on the recent gains which have been experienced in the area of equal employment opportunity. As the Commission is interested in, and committed to, encouraging the career development of women and minorities in management positions, we would favor some appropriate means of removing the aforementioned disincentive for retirement.

In this light, we have prepared a substitute proposal which is attached to this letter. We believe that our substitute achieves the desired end in a more efficient manner than the Defense proposal. Essentially, our proposal would provide an annuity computed on the basis of final salary to any civil service employee whose rate of basic pay was limited by section 5303 or 5363, of title 5, United States Code, or other applicable statutory authority, prior to a pay increase and who retires at any time subsequent to the effective date of that pay increase. We consider this alternative attractive for several reasons:

1. It removes the disincentive to retire at any given time, rather than just during a short period following the last lifting of the statutory limitations on pay. The method of increasing executive pay, at irregular intervals and by substantial increments, causes a special problem for these employees with regard to the high three year average salary provision of the retirement law. There is a compelling reason for them not to retire immediately after a pay increase, which the great majority of employees, whose pay is increased regularly and more gradually, do not share.
2. It mitigates against the adverse effects of a reduction-in-force on EEO advances. By allowing senior executives to retire immediately on annuities computed on the basis of the maximum foreseeable benefit, considerably fewer reductions would have to be sustained by the more junior managers, who are, in many cases, women and minorities.
3. It provides for continued effective agency operation. By encouraging imminent retirements, it serves to protect those mid and lower level managers who are important to the agency's future, and who might otherwise be lost in a reduction-in-force situation.

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4. It tends to make pay a neutral factor for an employee considering retirement.

We recognize that enactment of legislation along the lines suggested might precipitate the retirement of certain individuals whose services are not readily replaceable, and who would otherwise continue on the job. However, balanced against the stated advantages of the proposal, we believe that the risk involved is an acceptable one.

In our judgment, our substitute proposal is preferable to the original Department of Defense draft bill. While the goals are basically the same in each case, we believe our substitute offers a more efficient and equitable means of attaining them. Accordingly, we urge that our substitute bill be supported in lieu of the Defense bill. A complete legislative package for submission of our proposal to the Congress has been prepared.

At the end of 1976 there were about 21,000 Federal employees who were affected by the pay freeze. Of these, there are approximately 4,100 who would be eligible to retire voluntarily at final salary. We have no way of knowing how many of those eligible to retire under this proposal would do so, but certainly all would not. Added retirement costs would result for those who would choose to retire earlier than they would have in absence of the proposal, but we do not believe that the total cost would be substantial. We are obtaining data on retirement patterns so that the costs of the various proposals can be fully analyzed. We expect to have cost figures by September 30.

Attached are copies of identical letters with which the Commission proposes to submit to the Speaker of the House and the President of the Senate the referenced substitute draft legislation. We shall appreciate your informing us whether there is any objection to submission of the draft legislation as proposed.

By direction of the Commission:

Sincerely yours,

*Alan K. Campbell*  
Alan K. Campbell  
Chairman

Enclosure

RD:RET:GWood:djl 9/19/77

Honorable Thomas P. O'Neill

Speaker of the House of Representatives

Dear Mr. Speaker:

I submit for the consideration of Congress, and recommend favorable action on, the attached draft bill to lessen the effect of statutory pay limitations on the retirement of certain executive employees under the provisions of the Civil Service Retirement law.

Under current law, civil service retirement annuities are computed on the basis of a high three year average salary and length of service. For the great majority of employees, whose pay is increased by gradual amounts at regular intervals, the average salary component in the computation is not a critical element in the timing of retirement. However, for executives whose pay is limited statutorily, quite the opposite is true. Their pay is adjusted irregularly and by substantial amounts. Consequently, for them, the timing of retirement is intimately related to the average salary factor, due to its fluctuant nature. The normal operation of the retirement law produces a formidable disincentive for these employees to retire within three years of a pay adjustment. This situation which restricts the flexibility of the agency as well as the employee, and which is currently being experienced, takes on an added dimension when an agency becomes subject to a reduction-in-force. In such a case the retirement law acts to thwart the preferences of agency management by encouraging the most senior executives, who might otherwise be willing to retire, to remain on the job simply for the purpose of maximizing their average salary for annuity purposes, while those with lower retention rights, who are being counted on to play important roles in the agency's future, must be released. Often, this latter group contains many women and minorities who have recently benefited from equal employment opportunity programs.

In light of the above, we believe that the disincentive for senior executives to retire must be eliminated, and we have designed our proposal to that purpose. Essentially, our proposal would alter the retirement law to provide an annuity computed on the basis of final salary to any civil

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service employee whose rate of basic pay was statutorily limited prior to a pay increase, and who retires at any time subsequent to the effective date of that pay increase. We believe that our proposal represents an effective and equitable solution to this problem.

We recognize that enactment of legislation along the lines suggested might precipitate the retirement of certain individuals whose services are not readily replaceable, and who would otherwise continue on the job. However, balanced against the advantages provided by the proposal, we believe that the risk involved is an acceptable one.

At the end of 1976 there were about 21,000 Federal employees who were affected by the pay freeze. Of these, there are approximately 4,100 who would be eligible to retire voluntarily at final salary. We have no way of knowing how many of those eligible to retire would do so, but certainly all of those eligible to retire would not. Added retirement costs would result for those who would choose to retire earlier than they would have in absence of the proposal, but we do not believe that the total costs would be substantial. We are obtaining data on retirement patterns so that the costs of this proposal can be fully developed and submitted at a later date.

We urge that prompt attention be given to this proposal because of the critical nature of the aforementioned problem for agencies, such as the Department of Defense, for which major reductions-in-force are imminent. In addition, enactment of this proposal would facilitate the efforts of other agencies who are planning to cut back or reorganize in the near future.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of the proposal.

A similar letter is being sent to the President of the Senate.

By direction of \_\_\_\_\_

Sincerely yours,

Alan K. Campbell  
Chairman

Attachment

RD:RET:Ghood:michaud

9/19/77

*9/22/77*

UNITED STATES  
CIVIL SERVICE COMMISSION  
WASHINGTON, D. C. 20415

Adm. Turner: 11/7/77  
Material for meeting at OMB, 1:00 p.m.,  
on 11/8, Room 252.

From—Alan K. Campbell  
Chairman